

**ORDINANCE NO. 09-37**

ORDINANCE GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A CHARTER SCHOOL PURSUANT TO HIALEAH CODE §98-181(2)i, ON PROPERTY ZONED M-1 (INDUSTRIAL DISTRICT). **PROPERTY LOCATED AT 3500-3550 WEST 84 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Planning and Zoning Board at its meeting of April 8, 2009, recommended approval of the CUP and parking variance; and

**WHEREAS**, on April 28, 2009, the City Council bifurcated the CUP request from the parking variance, since a modification and expansion of the parking variance will require re-advertising and accordingly, will be heard as a separate item at a later hearing; and

**WHEREAS**, the petitioner proffered a declaration of restrictive covenants providing that (1) for the operation of the charter school on the premises, the maximum capacity of children shall be no more than 800 students; provided, however, that the property owner or school operator, at the conclusion of the first semester of operation, may increase the maximum capacity of children for the charter school up to including 1,000 students by application and approval of the Growth Management Advisory Committee; (2) For the operation of the existing day care facility on the premises, there shall be no more than 200 children attending the day care facility; (3) the operation of the charter school shall include staggered hours for drop-off of students for the beginning of class and staggered hours of student pick-up at the end of the school day; and (4) the charter school and day care facility shall provide onsite traffic control personnel at peak traffic hours to facilitate the proper flow of traffic to and from the school and the day care facility and in connection with the internal circulation of motor vehicles and buses, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

**Section 2:** The below-described property is hereby granted a conditional use permit (CUP) to allow a charter school pursuant to Hialeah Code §98-181(2)i. on property zoned M-1 (Industrial District). The property is located at 3500-3550 West 84 Street, Hialeah, Miami-Dade County, Florida and legally described as follows:

TRACT "B", OF "BERNIE INDUSTRIAL",  
ACCORDING TO THE PLAT THEREOF, AS  
RECORDED IN PLAT BOOK 158, PAGE 2, OF THE  
PUBLIC RECORDS OF MIAMI-DADE COUNTY,  
FLORIDA.

**Section 3: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 5: Additional Penalties upon Violation of Conditions of Use.**

Any change of the terms and conditions of the use identified in this ordinance and as provided in the Declaration of Restrictive Covenants, if submitted, will cause a revocation of the city occupational license if issued in connection herewith and the

property shall revert to the zoning classification without the benefit of the conditional use and associated variances.

**Section 6: Severability Clause.**

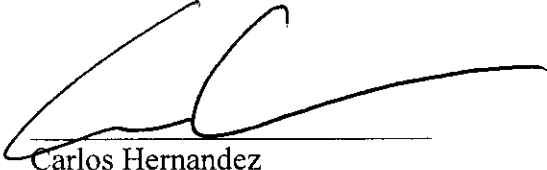
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 7: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.


PASSED and ADOPTED this 28th day of April, 2009.

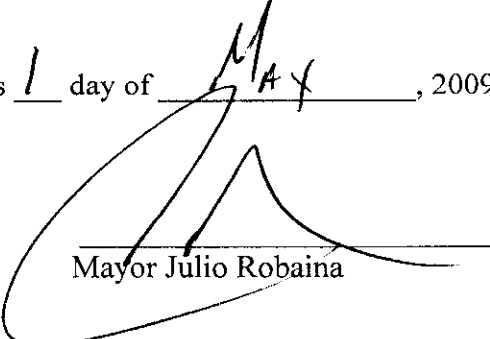
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
Carlos Hernandez  
Council President

Attest:

Approved on this 1 day of MAY, 2009.

  
Rafael E. Granado, City Clerk

  
Mayor Julio Robaina

Approved as to form and legal sufficiency:

  
William M. Grodnick, City Attorney

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Ordinance was adopted by a 6-1 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Gonzalez, Hernandez and Yedra voting "Yes", and Councilmember Garcia-Matinez abstained.



CFN 2009R0350347  
DR Bk 26865 Pgs 0103 - 1047 (2pgs)  
RECORDED 05/13/2009 15:12:11  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA

**Prepared by and return to:**  
City of Hialeah  
Planning Division  
501 Palm Avenue, Second Floor  
Hialeah, FL 33010

**DECLARATION OF RESTRICTIVE COVENANTS  
(Corporate)**

(I) (WE), Lincoln-Marti Charter Schools, Inc.

Being the owner(s) of lands described herein:

The street property address is 3500-3550 W 84<sup>th</sup> Street, Hialeah, Florida 33018

The folio number is 04-2028-093-0020,

make the following Declaration of Restrictive covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida.

In connection therewith, the undersigned covenants, represents and agrees as follows:

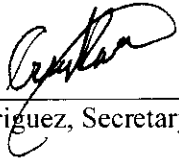
1. The premises located at Tract B of Bernie Industrial, according to the Plat thereof as recorded in Plat Book 158 at Page 2 of the Public Records of Miami-Dade County, Florida. a/k/a 3500-3550 W 84<sup>th</sup> Street, Hialeah, Florida 33018; R/E Folio No.: 04-2028-093-0020.
2. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.
3. Where construction has occurred on said property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.
4. For the operation of the charter school on the premises, the maximum capacity of children shall be no more than 800 students; provided, however, the property owner or school operator, at the conclusion of first semester of operation, may increase the maximum capacity of children for the charter school up to including 1,000 students by application to and approval of the Growth Management Advisory Committee. For the operation of the existing day care facility on the premises, there shall be no more than 200 children attending the day care facility. The operation of the charter school shall include staggered hours for drop-off of students for the beginning of

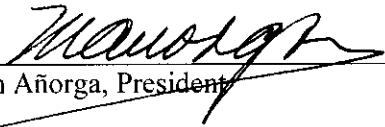
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class and staggered hours for student pick-up at the end of the school day. The charter school and day care facility shall provide onsite traffic control personnel at peak traffic hours to facilitate the proper flow of traffic to and from the facility and in connection with the internal circulation of motor vehicles and buses.

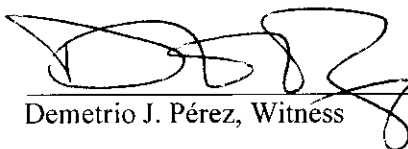
IN WITNESS WHEREOF, We have hereunto set out hands and seals at 2700 SW 8<sup>th</sup> Street, Miami, Florida 33135, this 27<sup>th</sup> day of April, 2009.

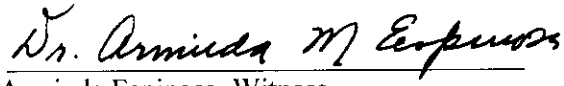
Name of Corporation: Lincoln-Marti Charter Schools, Inc.

Attest:   
Cruz R. Rodriguez, Secretary

By:   
Martín Añorga, President

Signed, sealed and delivered in the presence of:

  
Demetrio J. Pérez, Witness

  
Arminda Espinosa, Witness

**STATE OF FLORIDA  
COUNTY OF MIAMI-DADE**

The foregoing instrument was acknowledged before me on this 27<sup>th</sup> day of April, 2009 by Martín Añorga as President, and Cruz R. Rodriguez as Secretary, of Lincoln-Marti Charter Schools, Inc., a Florida not-for-profit corporation.

They are personally known to me and did not take an oath and who attest to the truth and accuracy o the representations contained herein.

This document was prepared by:

\_\_\_\_\_  
Name

  
Signature of Notary Public

\_\_\_\_\_  
Street

\_\_\_\_\_  
Name of notary, Notary Public, State of Florida, Commission Number: 556272

\_\_\_\_\_  
City State Zip Code

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